Cr.A. 83/98 (2)

XII-189 / (Jail)
C. J. P. R. 11/94/2,000

CF0000060506

DB(Jm)

APPEAL OF PRISONER

No. 6644 एवं 6645 Name स्वप्ना @ राजेश्वरी s/o परताल एवं परताल s/o जोगड़ी

Father's name ओर्ट किसारी ग्राम- देवकिसारी, थाना- डिंडौरी, पुलिस चौकी- विल्हा

Residence जिला- बिलासपुर (म०प्र०) Age .....

Sentenced to आजीवन कारावास On 22.9.97

Under section 302, 34 I.P.C. by माननीय अति० सत्र० विशेष न्यायाधीश बिलासपुर (म०प्र०)

It is explained to the prisoner that if he states or wishes to be represented by legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear within seven days he may not heard at all. If the prisoner states that he does not wish to be represented by legal practitioner the court may proceed at once with the case and will not be obliged to give a hearing to any legal practitioner who should appear.

1 Date of Application for copy of Judgement .....

2 Date on which copy received .....

3 Date on which Appeal sent .....

4 Whether the prisoner wishes to be represented or not – Yes / No

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No. 6644 एवं 6645 Name स्वप्ना उर्फ राजेश्वरी s/o परताल परताल s/o जोगड़ी

Confined in केन्द्रीय जेल Jail सेन्ट्रल जेल जयपुर (म०प्र०)

No. 399/IV/97 Dated 24/12/1997

Forwarded to the ~~CHIEF JUDICIAL MAGISTRATE~~ माननीय अति० सत्र० न्यायाधीश महोदय माननीय उच्च न्यायालय म०प्र० जबलपुर

togather which a copy of judgement or order passed in the case for favour of transmission to the proper Appellate Court.

संलग्न:- S.T. No. 72/97 की सत्य प्रतिलिपी

Superintendent
Superintendent,
Central Jail Jaipur (M.P.)

24.12.97 & 26.12.97

Date of receipt in ..... office 8 JAN 1998

Date of receipt record to accompany the 30 DEC 1997

Memo of Appeal to the Appellate court 24 DEC 1997

No ..... Dated 199

Forwarded to the .....

Date of receipt in Appellate Court .....

High Court of Madhya Pradesh
JABALPUR
Recd. on 6 JAN 1998
Registration No. 7
Receipt Clerk
High Court, Jabalpur.

(P. T. O.)

(33)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक C.R. 83/98 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL APPEAL NO. 83 OF 1998

APPELLANTS : Khanna @ Rajesh and another

Vs.

RESPONDENT : State of Madhya Pradesh

DIVISION BENCH: **HON'BLE SHRI L.C. BHADOO &**
HON'BLE SHRI SATISH K. AGNIHOTRI, JJ.

Present:
Shri J.K.Shastri, learned counsel for the appellants.
Shri U.N.S. Deo, learned G.A. for the State/respondent.

ORAL JUDGMENT
(Delivered on 20th July, 2006)

PER L.C. BHADOO, J.

By this appeal under Section 374(2) of the Code of Criminal Procedure sent through Superintendent, Central Jail, Raipur, accused/appellants Khanna @ Rajesh and Partal have questioned the legality and correctness of their conviction and sentence under Section 302 read with Section 34 of the Indian Penal Code passed by the Additional Sessions Judge/Special Judge, Bilaspur in Sessions Trial No. 72/97, whereby the learned Additional Sessions Judge/Special Judge, Bilaspur, after holding the accused/appellants guilty for commission of the

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.83/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

offence under Section 302 read with Section 34 of the I.P.C., has sentenced them to undergo imprisonment for life.

2. Case of the prosecution in brief is that on the fateful day when PW-1, Bahadur alias Baila was going to invite his sister-in-law Jamunabai for dinner on the occasion of *Chhatti* festival, he saw that in the street, accused/appellants Partal and Khanna were quarreling with Charan in connection with a dispute regarding grazing of bullock of Partal in the field of Charan. He saw that Partal and Khanna were attacking Charan Singh with lathi and axe and on account of the injuries sustained by him on his neck and back he fell down on the ground. Accused Khanna assaulted with axe on the neck of Charan and Partal assaulted with lathi, even on the intervention by Bahadur alias Baila the accused persons continued to assault Charan, as a result of the said assault Charan died spontaneously. The incident was also witnessed by P.W.-2, Ku.Anju Kumari and P.W.-3, Bhagwantin alias Bhairi. After informing the village Kotwar, the witness Bahadur alias Baila went to the police station and reported the matter. The Station House Officer, on receiving the report from Bahadur alias Baila, registered the FIR, Ex. P-1 for the commission of the offence under Section 302 read with Section 34 of the IPC. The Investigating Officer left for the scene of occurrence, after giving notice, Ex. P-2 to the Panchas, he prepared Panchnama, Ex. P-4 of the dead body of Charan. He took into possession the blood stained and plain soil from the place of occurrence under Ex. P-5 and P-6 respectively. The weapon of offence axe was seized under Ex. P-7 from the possession of accused Khanna alias Rajesh and lathi was seized from the possession of accused Partal under Ex. P-8. Merg intimation of Ex. P-12 was recorded. Site plan of Ex. P-3

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr..A..8.3.98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was prepared by the Patwari. Body of Charan was sent for post mortem examination under Ex. P-13 to Community Health Centre, Bilha, where P.W.-6, Dr. (Smt.) C.K. Singh conducted post mortem examination and prepared the post mortem report, Ex. P-9. The doctor on the request of the police under Ex.P-15 gave her opinion Ex. P-10 regarding the fact that the injuries which were found on the neck of Charan could be caused with axe in question. Clothes of the accused persons were taken into possession under Ex. P-16 and P-17. The recovered articles were sent for chemical examination to Forensic Science Laboratory, Sagar, from where report of Ex. P-21 was received. After completion of the investigation, charge-sheet was filed in the Court of Additional Chief Judicial Magistrate, Bilaspur, who, in turn, committed the case to the Court of Sessions Judge, Bilaspur, from where learned Special Judge received the case on transfer for trial.

3. The prosecution in order to establish charge against the accused persons, examined 7 witnesses in all. On the other hand, statements of the accused persons were recorded under Section 313 of the Code of Criminal Procedure in which they denied their involvement in the crime and stated that they have been falsely implicated. They further stated that the witness Bahadur is on inimical relation with them and they have been outcaste. The accused persons examined DW-1, Jawahar and DW-2, J.P.Singh in their defence.

4. We have heard Shri J.K. Shastri, learned counsel appearing on behalf of the accused/appellants and Shri U.N.S.Deo, learned Govt. Advocate on behalf of the State.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A. 831/98 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 4 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

5. As far as the question of homicidal death of Charan Singh is concerned, the same has not been disputed by the learned counsel for the appellants. Even otherwise, PW-6, Dr. (Smt.) C.K. Singh has stated in her evidence that as many as 8 incised and lacerated injuries were found on the neck and back of the deceased. The cause of death of Charan Singh was hemorrhage and shock as a result of injuries on the neck which were sufficient in the ordinary course of nature to cause death. She has further opined that it is possible to cause the injures found on the body of Charan Singh by the axe in question. Therefore, in view of the evidence of Dr. (Smt.) C.K. Singh and eye-witnesses PW-1, Bahadur alias Baila, PW-2, Ku.Anju Kumari and PW-3, Bhagwantin alias Bhairi who witnessed the crime in question, the homicidal death of Charan Singh is established.

6. As far as involvement of the accused/appellants in crime in question is concerned, the conviction is based on the evidence of eye-witnesses, namely, PW-1, Bahadur @ Baila, PW-2, Ku.Anju Kumari, daughter of the deceased and PW-3, Bhagwantin @ Bhairi, aunt of the deceased and accused Khanna @ Rajesh. PW-1, Bahadur alias Baila has categorically stated that on the fateful day on the occasion of *Chhatti* festival he was going to invite his sister-in-law Jamunabai for dinner and at that time he saw that some dispute was going on in the street between Partal and deceased Charan as the bullock of the accused had grazed the crop of Charan. Accused Partal and Khanna @ Rajesh entered their house, closed the door from inside and thereafter accused Khanna came out carrying axe in his hand, Partal came out with lathi and started attacking Charan Singh. Accused Khanna attacked the deceased with axe and Partal with lathi. Accused Khanna attacked the deceased on his

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक CR/98/8.3.1998.... **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

neck with axe as a result of which he fell down on the ground and died spontaneously. This evidence has been corroborated by the evidence of PW-2, Ku.Anju Kumari who has stated that she witnessed the accused persons assaulting her father Charan with axe and lathi. The above evidence of the witnesses further stands corroborated by the evidence of PW-3, Bhagwantin, particularly when the witnesses PW-1, Bahadur @ Baila and PW-3, Bhagwantin are related to the accused as well as the deceased as Bahadur has stated that accused Partal and the deceased both are his nephews and PW-3, Bhagwantin has stated that Partal is the son of her sister and deceased is also her nephew, son of her sister Jamunabai. Therefore, these witnesses are related to both the accused persons and the deceased as such being relative of both sides there was no occasion for them to implicate the accused persons in a false case that too in such a serious crime of murder. In their cross-examination the defence has not been able to elicit any circumstance which makes the evidence of these witnesses untrustworthy or unreliable. The evidence of these eye-witnesses is also corroborated by the medical evidence of P.W.-6, Dr. (Smt.) C.K.Singh who has stated that the deceased received as many as 8 injuries, which could be caused by axe in question and that the weapons of offence i.e. axe and lathi were recovered by the Investigating Officer from the possession of the accused persons. Therefore, to this extent, we do not find any illegality or infirmity in the impugned judgment of the trial Court and that the involvement of the accused in assaulting the deceased with axe and lathi stands established beyond the shadow of any doubt.

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.D.83/18 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 6 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

7. Learned counsel for the accused/appellants argued that from the evidence available on record, it can safely be held that the accused persons had not attacked the deceased with an intention to cause his death. While drawing the attention of the Court towards the evidence of PW-3, Bhagwantin, he further argued that the deceased himself went to the house of accused persons carrying lathi in his hand and started quarrelling with them and in that process in a sudden provocation the accused persons assaulted the deceased, therefore, the offence against the accused persons does not travel beyond Section 304 Part II of the IPC.

8. On the other hand, learned counsel for the State/respondents supported the impugned judgment of the trial Court.

9. In order to appreciate the arguments advanced by the respective counsel, we have perused the evidence of P.W.-2, Ku.Anju Kumari, who in paragraph 9 of her cross-examination has stated that accused persons were talking from inside their house after closing the door and her father was also talking with them standing in the courtyard of the house of the accused persons and in paragraph 12, she has further stated that after receiving the injuries, her father was lying down in the courtyard of the house of accused persons and he died there. It has also come on record that both the deceased and accused persons were abusing each other. P.W.-3, Bhagwantin, in paragraph 5 of her cross-examination, has stated that Charan left for the house of accused persons carrying lathi in his hand and was saying that the bullock of the accused persons have grazed his field, therefore, he will not leave them. In paragraph 7, she has stated that

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.83/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 7 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Charan was attacked in the courtyard of the house of the accused Partal, therefore, it is established that on account of grazing of bullock of the accused persons in the field of Charan, Charan was not happy with them and, therefore, he left for the house of accused persons carrying lathi in his hand and there hot words were exchanged between both the parties and in that process the accused Khanna assaulted the deceased with axe and accused Partal with lathi after snatching the lathi of the deceased. Exception 4 of Section 300 of the I.P.C. envisages that culpable homicide is not murder if it is committed without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender's having taken undue advantage or acted in a cruel or unusual manner. It is admitted position that the deceased went to the house of the accused persons carrying lathi and there hot words were exchanged, which provoked the accused persons.

10. As far as the accused Partal is concerned, he assaulted the deceased with lathi after snatching the same from deceased and nothing has come in the evidence of prosecution witnesses that Partal was sharing intention with Khanna to commit murder of Charan and the manner in which the dispute started and looking to the part played by Partal, it cannot be said that he took any undue advantage or acted in a cruel or unusual manner and as such his case is covered under Exception 4 of Section 300 of the I.P.C., therefore, offence against him does not travel beyond Section 304 Part II of the I.P.C.

11. As far as act of accused Khanna alias Rajesh is concerned, it has come on record that he assaulted the deceased with axe on vital part of

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A.83/98 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 8 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

his body i.e. neck and other parts of the body causing as many as 8 incised and lacerated wounds and as per the doctor's opinion the injuries on the neck of the deceased was fatal, which was sufficient in the ordinary course of nature to cause death. When on account of assault and snatching lathi by accused Partal the deceased became armless, there was no occasion for accused Khanna to continue to assault so mercilessly that too with a deadly weapon like axe and to cause 8 injuries and some injuries were on neck which caused the death of Charan, therefore, his case is not covered under Exception 4 of Section 300 of the I.P.C. as he took undue advantage and acted in a cruel and unusual manner. As has been held by the Hon'ble Apex Court in the matter of **Thangaiya vs. State of Tamil Nadu, reported in 2005 Cri.L.J. 684** that intention of the accused can be gathered from the weapon used, size of the weapon, place of the assault, facts leading to assault, part of the body where injury is inflicted, which are the factors to be considered for ascertaining the intention.

12. Based on the above principle if we look into the facts of the present case, accused Khanna alias Rajesh was having deadly weapon i.e. axe in his hand and he assaulted the deceased repeatedly on his neck i.e. the vital organ of the body, therefore, the intention of the accused Khanna was writ large to finish Charan Singh forever. Therefore, we are of the considered opinion that Khanna has rightly been convicted and sentenced for commission of the offence of murder of Charan.

13. In the result, the appeal of Khanna alias Rajesh being devoid of merits is liable to be dismissed and the same is accordingly dismissed. As

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...CR...A...2.3/96 **सन्** ~~200~~

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -9-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

far as appeal of appellant Partal is concerned, the same partly succeeds and his conviction under Section 302 read with Section 34 of the I.P.C. and sentence imposed under that section are set aside. Instead thereof, accused Partal is convicted under Section 304 Part II of the I.P.C. and sentenced to undergo rigorous imprisonment for 10 years.

14. It is stated that accused Partal is in custody since 4-11-1996, therefore, the accused shall be entitled for set off for the period undergone by him in custody during investigation and trial.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Satish K. Agnihotri
Judge

Khan

P.T.O.

27.3.06 13.6.06